

The University of Chicago

THE POSITION IN INTERNATIONAL LAW
OF ECONOMIC MEASURES OF COERCION
CARRIED ON WITHIN A STATE'S
TERRITORY

A PART OF A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE
SOCIAL SCIENCES IN CANDIDACY FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF POLITICAL SCIENCE

1935

By

JANICE CATHERINE SIMPSON

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CHAPTER I

INTRODUCTION

INTERNATIONAL COMMERCE IN TIME OF PEACE

In 1919 the idea of economic coercion between states in place of armed coercion caught the imagination of a world weary of bloodshed, and the idea still survives in an international society trembling again on the brink of war. The popular conception of coercion of this character at the present time is related generally to the provisions of Article Sixteen of the Covenant of the League of Nations which provide for the operation of economic sanctions against states which fail to fulfill their international obligations in certain circumstances and connotes the suspension of all intercourse between the coerced state and other members of the Society of Nations.

Economic coercion in a wider sense, however, has been a commonplace of international relations for several centuries. In this category may be placed any measures employed by one state to influence the conduct of another by control of commerce between the territories of the two states concerned. Measures which affect the mutual commerce of the two states by rendering the exchange of goods and services between them have been very common. In this group are included discriminatory tariffs, export and import quotas and embargoes, travel embargoes, and similar measures. Another type of municipal measure designed to influence the conduct of other states is the control which limits foreign loans for governmental or commercial purposes, or bars them entirely. A different type of impediment to the free exchange of goods and services between two states, not ordinarily implicating the government of the state in its operation, is the refusal of the population of one state to use the goods and services of a second state because of some disturbance in the political relations of the governments of the states concerned - the international boycott. Measures of this character, except for the boycott, may be employed when the political relations of the states concerned are amicable. Except for certain loan controls and the popular boycott, such measures have not ordinarily been directed to polit-

ical ends but have been aimed at specific grievances of an economic character.

The legal character of these municipal regulations has never been defined in any document of international law, and must depend entirely upon the custom and usage of the members of the State System. Such measures are essentially pacific in character, involving neither threat nor use of force. Since they are coercive in intention, however, they must come within the category of pacific measures of coercion short of war. If the measures are of a character to constitute a breach of the international obligations of the state if applied in normal circumstances, they are acts of reprisal; if, on the other hand, they are within the competence of the state, and constitute only discourteous acts, they are acts of retorsion or of retaliation. Only by definition of the character of commerce in international law and by examination of the practice of the members of the State System can the position in international law of measures of this type be defined.

The commercial relations of the members of the State System first achieved importance in the fourteenth century, although international trade was carried on to some extent earlier.¹ Since that time the commercial relations of states have been based upon treaties of commerce between them. Such treaties are not necessary for the maintenance of commercial relations between states, but define the conditions under which the contracting parties agree to maintain mutual trade relations, and constitute an element of stability in the calculations of the merchants of each state. The first treaties of commerce ordinarily contained the guarantees which sovereigns had been accustomed since the eighth century to grant to alien merchants entering their realms for the purpose of trade.² Customs duties were fixed by treaty as early as 1434, and other matters relating to commerce have been included in them from time to time.³ Now commercial treaties

¹Clive Day, History of Commerce (New York, 1917), pp. 2-105, passim.

²B. Nolde, "Droit Technique des Traités de Commerce," Académie de Droit International, Recueil des Cours, II (1924), 299-304. See also V. Philbert, De la Liberté du Commerce dans les Traités de Commerce (Paris, 1902), pp. 19-20.

³Nolde, op. cit., pp. 303-04.

concern themselves with all matters pertaining to the mutual commerce and navigation of the contracting powers, and may consist in regulation so complete as to constitute a 'code,' or may be a mere most-favored-nation declaration.¹

Except for a brief trend toward world free trade in the middle of the nineteenth century, the commercial relations of the members of the State System have been characterized by the imposition of tariffs upon goods entering the territories of the members. About 1890, the practice of varying tariff treatment of foreign goods by treaty arrangement was introduced.² Most states now follow this practice, although certain important states have completely autonomous tariffs.³

Except in so far as the state has limited itself by treaty with other states, it may exercise complete control over the commerce between its territory and the territories of other states, through import and export duties, trade embargoes, and by production and marketing controls.⁴ Such measures are not ordinarily intended by the states employing them for the disadvantage of other states, but for the advantage of the state employing them, in the development of an industry or the maintenance of a world market.⁵

The tariff policy of a state varies according to the type of commercial treaty which it makes with the states with which it trades. The unconditional most-favored-nation commercial treaty, which is the prevailing type of treaty, provides that the signatory states shall receive in each others' territory the same treatment as the most favored nation. Under this system, no matter how high the tariffs of a state may be, they are the same for the goods of every state which has a commercial treaty with that state. The conditional most-favored-nation treaty provides that the goods of signatory states shall receive the same treatment in each others' territory as the goods of other states only when equal concessions are made for equal privileges. In this manner,

¹Ibid., pp. 326-27.

²Ibid., pp. 318, 386-87; R.H. Inglis Palgrave, Dictionary of Political Economy, ed. Henry Higgs (London, 1926), II, 367-71.

³Nolde, op. cit., p. 318. France introduced the arrangement of maximum and minimum tariffs varied by treaty; Germany that of a maximum autonomous tariff reduced by treaty.

⁴John Donaldson, International Economic Relations (London, 1928), p. 448.

⁵Ibid., pp. 459-60.

different treatment may be accorded the same goods, depending upon their origin.¹

Although in the absence of treaties, the tariff of a state is regarded as a matter of national sovereignty,² states on occasion make protests against features of the tariff policy of another state. Such protests are made only when the tariff policy of the state is considered directly inimical to the interests of the protesting state. This is evident in the experience of the United States.

On at least eleven occasions between 1865 and 1918, the United States instructed its representatives abroad to make representations to a foreign government "of the advantages to be derived from a modification" of certain duties,³ or to "urge the removal of"⁴ or to bring to the attention of the government concerned "the hardship to be worked" by an exorbitant tariff.⁵

On one occasion, while making such representations, the American Government specifically recognized the complete right of a state to make what regulations of tariff it would, apart from treaty stipulations.

"While it may be allowed that the Spanish Government has a perfect right to prescribe any terms which may not be otherwise prescribed by treaty, upon which foreign commerce shall be carried on in that quarter, it is certainly for the interest of that commerce, that honest traders be protected from the exercise of arbitrary power."⁶

Three of the American protests were directed against discriminatory tariffs. On two occasions such discrimination was termed unfriendly. In 1885, the increase in duty on petroleum by the Netherlands Government was characterized as unfriendly, in view of the concessions made by the American Government to products of the Dutch East Indies. This duty was modified, however, only upon modification of the American tariff treatment of

¹Jacob Viner, "Most Favored Nation Clause in Treaties," Journal of Political Economy, XXXII (1924), 112.

²League of Nations World Economic Conference, May, 1927, Report and Proceedings, Subcommittee of Experts for the Unification of Customs Nomenclature, I, 41.

³United States Foreign Relations, 1865-1866, II, 332.

⁴Ibid., 1897, p. 359.

⁵Ibid., 1905, pp. 45 ff.

⁶Ibid., 1868, p. 8.

Sumatra tobacco.¹ In 1897 the proposed French tariff was termed "unfriendly in character because discriminatory."² When, in 1882, the Venezuelan Government made certain changes in its customs legislation to remove a discrimination against the commerce of the United States upon the request of the American Government, the Venezuelan Government stated specifically that the change was made as a matter of friendship, not as a duty.³ The United States is said to have made similar protests to foreign governments since 1918.⁴

In 1929, the Government of the United States received representations from twenty-nine states and from eight members of the British Commonwealth of Nations, concerning the tariff measure then under consideration by the Congress of the United States.⁵ In at least one instance, the representation was made upon the request of the American Government.⁶

Each of these representations had the intention of drawing to the attention of the American Congress certain factors in the trade between the United States and the state making representations, concerning which Congress appeared to be incompletely informed. None of them directly suggested that the United States was obligated in any way to consider the external effect of its tariff policy. Six states specifically denied any purpose of interfering in a policy adopted by another state for the purpose of promoting its welfare.

Thus, even where the external effects of the tariff policy of a state are important enough to cause numerous states to make representations concerning it, there is no recognized right for

¹Ibid., 1886, pp. 735-61, passim, especially, p. 739.

²Arthur K. Kuhn, "Tariff as a Matter of International Concern," American Journal of International Law, XXIII (1929), 816.

³United States Foreign Relations, 1883, pp. 895-98.

⁴Ellery C. Stowell, "Tariff Relations with France," American Journal of International Law, XXIV (1930), 110-18.

⁵United States Congress, 71st Cong., 1st sess., Senate Committee on Finance, Hearings on House Resolution 2667, Vol. XVIII, Foreign Communications (Washington, 1929), passim.

⁶Ibid., p. 166. Communication of Paraguay. "I am pointing out this difference in treatment only on the assumption that I am complying in spirit with the former request of your committee for comment on the pending tariff."

⁷Ibid., pp. 12, 18, 221, 220.

any state to make such protests.

In like manner, the control by the state of a raw material, or other commodity of international commerce is regarded as completely within the competence of the state.¹ This type of control, official or quasi-official, has been the most important of the official controls of international commerce, apart from tariffs. Such controls are exercised over materials of which the controlling state has a monopoly or a virtual monopoly of the world supply. About twenty commodities are now subject to some control. Two of the commodities, Chilean nitrates and German potash have been controlled since the 1870's. Three other materials were controlled by 1900.² None of the controls was imposed for the purpose of coercing another state.

Government action is necessary in order to implement the control. The imposition of an export tax generally serves merely to raise revenue. Other methods of control, such as the embargo of exports,³ purchase of portions of the supply for withdrawal from the market,⁴ compulsory limitation of production,⁵ and encouragement of monopoly organization for the control of the sale of the good,⁶ have the intention of increasing the profits of the producers, or of encouraging the manufacture of the material within the jurisdiction of the controlling state. Most of these measures have had considerable success in achieving the ends at which they were directed. The deciding factor seems to be the development of competing supplies outside the controlling state. There has been international agreement to control a commodity monopolized by two states.⁷

The United States, which is one of the states most affected by export controls of certain important raw materials, has on several occasions made ineffective protests against the maintenance

¹The grant of a sulphur monopoly by Sardinia in 1839 was the occasion of the exercise of reprisals by Great Britain against Sardinia because such grant was a breach of the treaty of commerce between Sardinia and Great Britain. See British and Foreign State Papers (1839-1840), XXVIII, 1163-1242, passim; ibid. (1840-1841), XXIX, 175-204, passim, p. 1225.

²B.B. Wallace and L.R. Edminster, International Control of Raw Materials (Washington, 1930), pp. 13-22, passim.

³Ostriches and ostrich eggs, Union of South Africa.

⁴Coffee, Brazil; cotton, Egypt.

⁵Potash, Germany.

⁶Nitrates, Chile; raw silk, Japan.

⁷Wallace and Edminster, op. cit., pp. 268-72.

of such controls. In 1910, such protests were made against German measures which rendered valueless American contracts made outside the monopoly. The matter was settled only by concessions on the part of the Americans involved.¹ In 1922, fruitless protests were made against the British rubber control.² The only resort of states adversely affected by monopoly controls of essential raw materials is to municipal measures discriminating against monopolies and the development of substitutes.³

Certain other controls are regularly imposed by some states upon their commerce with others for municipal purposes. To protect domestic industry from the consequences of uneconomic competition in the form of bounty-fed imports, many states impose countervailing duties on such goods.⁴ These duties are not considered in breach of treaty, even where the commercial relations of the states are based on a most favored nation treaty.⁵ Imports and exports of certain commodities may be permitted only under license, either to encourage a domestic industry, or to protect the internal price level, or to promote the general welfare of the state imposing the control, as in time of war.⁶ Total prohibition of the import of goods produced under certain conditions has been resorted to in order to protect the industry of the state from competition with convict or other forced labor.

The control by municipal measures over commerce with the state's territory is clearly indorsed by international practice. In their relations among themselves, the members of the European State System have regarded such measures as strictly domestic, and have attempted to combat their effects largely by municipal measures. Such diplomatic representations as have been made have been based upon friendship rather than on legal grounds, and have been, on the whole, without great effect.

¹Ibid., p. 278; B.H. Williams, Economic Foreign Policy of the United States (New York, 1929), pp. 388-89.

²Wallace and Edminister, op. cit., p. 174. This control was abandoned in 1928 because of its failure to achieve the expected economic results.

³Ibid., pp. 292-314.

⁴International Sugar Convention, 1902. By this act, a group of states agreed to regulate the admission of sugar to their territories for the purpose of combatting the effects of sugar bounties. See Cd. 1003.

⁵Julius Hatschek, Outlines of International Law, ed. C.A.W. Manning (London, 1930), p. 187; see also Jacob Viner, Dumping (Chicago, 1923), passim.

⁶Donaldson, op. cit., p. 458.

In spite of this practice among themselves, the Members of the State System have on certain occasions vigorously objected to commercial regulations enforced by states which were outside the State System. The action of western nations in opening China, Japan and Korea to international commerce has been cited as evidence that no state may refuse entirely to trade with other states, but this action is by no means satisfactory evidence of any such rule of law. International law has traditionally been a body of rules and regulations in force between members of the State System, which were not necessarily applicable to states outside this group. On the whole, however, considerations other than the desire to open trade relations with these states influenced those states which undertook to open Asiatic states to commerce, but commercial considerations unquestionably exerted considerable influence upon the relations between members of the State System and these states.

Trade between China and the west began in Roman days.¹ In modern times, however, commercial relations were renewed only about 1600. By 1700, Portugal, France, Holland, and Great Britain had established trading relations with China.² British trade was recognized by the Imperial Government of China in 1757, and in 1762, a regular factory was established there by the English East India Company.³

Until 1834, a satisfactory trade between foreign and Chinese merchants was carried on at Canton through the Hong, an association of Chinese merchants responsible to their government for the conduct of foreign traders. When in 1834, after the abolition of the monopoly of the India Company, English officials were sent out to govern the British colony at Canton, there were difficulties because of the intention of the British officials to stress their official character. They were finally recognized by the Chinese Government as fulfilling only the function of the supercargoes of the English East India Company.⁴

In 1838 difficulties again occurred between the British traders at Canton and the Chinese Government, because of the attempts of the Chinese Commissioner to enforce Chinese laws

¹Hosea B. Morse and Harley F. MacNair, Far Eastern International Relations (New York, 1927), pp. 14-20.

²Ibid., pp. 43, 45, 48. See also William Foster, England's Quest of the Eastern Trade (London, 1933), p. 325.

³Ibid., pp. 326-33.

⁴Morse and MacNair, op. cit., pp. 58-67.

against opium. The British Government apparently had no intention of encouraging its nationals in evasion of Chinese laws regulating the opium trade.¹ Through the cooperation of the English superintendent, all stocks of opium on hand were surrendered. When the Chinese commissioner insisted upon additional guarantees that the opium trade would stop, the British official refused to secure compliance; trade with British merchants was stopped, and British traders were expelled from Canton and later from Macao. Trade in British goods went on under foreign flags. This was an old type of coercion, long used by the Chinese merchants to secure compliance with their demands.² There was clearly no stoppage of trade with Great Britain as such, but rather revocation of certain privileges accorded English merchants because of their failure to comply with the regulations of the Chinese Government in regard to the opium trade.

On the other hand, the Chinese Government had repeatedly refused to enter into regular diplomatic relations with Great Britain. The mission of Lord Macartney in 1793-1794 was received unwillingly by the Chinese Emperor;³ the embassy of Lord Amherst in 1816 was treated very cavalierly.⁴ After British officials were sent out to govern the trading factory at Canton, attempts to secure direct relations with the Chinese Government failed, and, contrary to the British Government's instructions, the superintendent communicated with the Chinese Government only through the association of merchants.⁵

In the spring of 1840, the British Government found the trade of its merchants with China cut off entirely because of the refusal of its subjects to meet the conditions of the Chinese Government, while at the same time no opportunity of reaching an agreement was afforded because of the refusal of the Chinese Government to enter into any kind of official relations with representatives of another power. The British Government announced its intention to pursue a strong policy in China in order to obtain for British merchants indemnity for loss of property incurred

¹Ibid., pp. 94-100; see also A.J. Sargent, Anglo-Chinese Commerce and Diplomacy (Oxford, 1907), pp. 72-73.

²Morse and MacNair, op. cit., pp. 81-85, 100, 115. Thus when the first British officials attempted to set themselves up at Canton, trade had been stopped for over a month, and early in December, 1838, trade was stopped until opium smuggling was abandoned.

³Ibid., pp. 46-47.

⁴Ibid., pp. 47-48.

⁵Ibid., pp. 89-90.

by threats of violence by the Chinese Government; and to obtain security against insult to persons trading in China in the future.¹

The result of the strong measures of the British Government was the so-called Opium War, ended by the Treaty of Nanking. This treaty, which made provision for open ports outside Canton, marked the first recognition by China of the legal, political, and economic equality of western nations.² The war cannot be said to have been fought for the purpose of establishing the right of any state to trade in China. Such trade had long been open to those traders who fulfilled the conditions laid down by the Chinese Government for the conduct of trade between its nationals and foreigners within its jurisdiction. It may rather be stated that the occasion of the Opium War was the inability of the two states concerned to come to an agreement because of the absence of official relations between them. As long as the trade with merchants of other states continued, it cannot be contended that Great Britain was defending the right of every state to maintain commercial relations with other states.

The opening of Japan to trade was accomplished by the United States in 1854, by show of force. Trade between Japan and western Europe commenced in the sixteenth century, but because of the activities of certain Christian missionaries, all Christians were expelled from the country in 1639.³ Only Dutch traders were permitted to remain, and they were confined to an island in the harbor of Nagasaki, and subjected to severe regulations in the matter of trading. No direct relations were maintained with the Netherlands Government.⁴

From time to time, efforts were made by western states to open commercial relations with Japan.⁵ In 1853, an American squadron required the Emperor of Japan to receive a communication from the President of the United States.⁶ The squadron withdrew,

¹Ibid.

²Ibid., p. 126. In 1689, a treaty had been signed by China with Russia governing boundary trade. Ibid., p. 49.

³Morse and MacNair, op. cit., pp. 36-42; I. Nitobe, The Intercourse between the United States and Japan (Baltimore, 1891), pp. 13-18.

⁴J.W. Foster, American Diplomacy in the Orient (New York, 1903), pp. 12-14.

⁵Morse and MacNair, op. cit., pp. 294-97; Nitobe, op. cit., pp. 32-33. An official expedition from the United States was warned off in 1846.

⁶Morse and MacNair, op. cit., pp. 297-99.

in order that there might be no appearance of coercion.¹ When it returned, in the spring of 1854, a treaty of amity and commerce between the United States and Japan was drawn up and signed. This treaty, which provided most favored nation treatment for American commerce and opened two ports beside Nagasaki to American vessels, did not reach the demands of the American negotiators, who had hoped to receive the privilege of unrestricted trade.² Great Britain, Russia, and Holland then entered into negotiations for similar treaties of commerce.³ No force was actually used to open Japan to commerce.⁴

In 1876, Japan forced Korea to open trade relations with itself, but trade relations were not established between other states and Korea by the Japanese action, nor did Korea enter into trade relations with western states until 1882. Numerous attempts were made by western states to open trade with Korea before this time, none of them successful.⁵ Armed expeditions were sent to Korea, in 1866 by France, for the purpose of punishing Korea for the death of Catholic missionaries, and in 1871, by the United States, to open trade relations with Korea on false information that Korea was seeking such relations.⁶ In 1882, on the request of Korea, an American agent was sent to Korea, and a treaty of commerce and navigation negotiated between Korea and the United States.⁷

Show of force was used in the first instance, in opening both Japan and Korea to commerce. The action of Japan toward Korea, however, is susceptible of interpretation rather as an effort to achieve hegemony in Korea than as an assertion of the right of all nations to trade there, since no other states were admitted to the Korean trade as a result of Japanese action. The

¹Foster, op. cit., pp. 158-59.

²Ibid., p. 165; see also Morse and MacNair, op. cit., p. 300 ff.

³Ibid., p. 302.

⁴The act of the Powers, Great Britain, United States, France and the Netherlands, in forcing the opening of the Straits of Shimonoseki in 1864, can be interpreted only as an act to enforce rights granted them by treaty, of which they were deprived by the act of a rebellious Japanese feudatory. See ibid., pp. 315 ff., 319 ff.

⁵Foster, op. cit., pp. 307-24, passim; see also Morse and MacNair, op. cit., pp. 382-84.

⁶Foster, op. cit., pp. 312-13.

⁷Morse and MacNair, op. cit., p. 390.

British war with China was clearly occasioned by other circumstances than the closing of China to trade, since foreign states had been trading with China for over two centuries and were continuing to trade there at the time of the war. Trade relations, therefore, were not the only object of the use of force in the far east in the nineteenth century. The armed expeditions of the members of the State System in this area were undertaken for other reasons, especially for the purpose of securing adequate diplomatic relations between the far eastern states and western states.

Special circumstances must certainly qualify any interpretations of European action in the Far East in regard to commerce with Asiatic states. Among themselves, it is clear that members of the State System act on the assumption that any municipal regulation of trade enforced by another state is a matter within the domestic jurisdiction of that state, even though such regulation incidently affect the interests of other states. Diplomatic representations may be, and are made against measures of one state which affect adversely the interests of other states, but these protests are uniformly based on considerations of policy and never on any rule of international law.

CHAPTER XI

CONCLUSIONS

The mechanics of international trade put every member of the State System at the mercy of any other state which can control an important element in its commerce, unless it is in a position to retaliate effectively against the other state by similar measures. Municipal regulations of commerce, such as an increase in tariff rates, may destroy an important industry in a foreign state or cause an expensive reorientation of it. Other types of municipal regulations affecting international commerce may have similar effects. Measures of this character are peculiarly adapted to the purpose of forcing another state to change its policies, since they are municipal regulations enforced only within the state's jurisdiction. A state adversely affected by such regulations is often unable to retaliate against the measures, because the nature of international commerce often makes the maintenance of trade relations between States A and B of great importance to State A and of no moment to State B. A state adversely affected by municipal regulations of commerce enforced by another state, therefore, must often capitulate to the demands of the other state, unless it is willing to resort to the use of force to secure their abandonment.

Before 1870 little use of measures of this character was made by the members of the State System for the purpose of influencing the conduct of other states. Since that time municipal regulations of commerce have been used for purposes of general police and for the attainment of national political and economic ends. As the maintenance of normal channels of international trade has become more important to the welfare of all states, the use of such measures has become more frequent and new types of measures have been introduced. The limits of coercion of this character are fixed only by the types of commerce between the states concerned in the coercion. The municipal regulations most frequently employed to influence the conduct of foreign states in the past have been retaliatory tariffs and loan controls. Toleration of popular boycotts directed against other states has been effective in influencing diplomatic negotiations. Export and import embargoes have not been common; the "travel boycott" is new.

The control by a capital exporting state of foreign loans on its bourse for the purpose of influencing the policies of the borrowing state is a commonplace of history. The extent of the use of this control can only be estimated, since it is generally disguised as governmental action to protect internal economy, or as the independent action of private bankers. A control of this character can only be employed by a capital exporting state, or by a state maintaining close political ties with such a state; its efficacy is strictly limited by the competition of rival money markets with conflicting designs.

Retaliatory tariffs, on the other hand, are designed only to influence the tariff policy of the state against whose goods they are enforced. Mutual tariff retaliation between two states in the absence of treaties of commerce, has on eight occasions reached such a point that their ordinary commercial relations were seriously disturbed before compromise on the terms of a treaty of commerce settled their difficulties. Such economic ruptures occur typically between states maintaining an important reciprocal trade, and end in compromise only when their mutual trade is equally important to each state. The length of the tariff war varies inversely with the importance of the trade to each of the states involved. No tariff war appears to have been undertaken from political motives, although the political relations between the states involved have often influenced the course of the rupture.

Unlike the retaliatory tariff or the loan control, the boycott is an instrument of the people of the state, not of its government. The occasion of such a movement appears to be the impulse to punish an aggressive state for an injury to the boycotting state. Such movements occur characteristically when the use of armed force is impossible because of the superior strength of the boycotted state, or of its allies. This spontaneous movement, on some occasions at least, has been used by the government of the boycotting state as an aid in its diplomatic efforts to obtain redress for the injury suffered. There have been thirteen economically important international boycotts, eleven in China and two in Turkey, and numerous abortive efforts to start such movements in Europe as well as in the East. The completeness of the paralysis of commercial relations between the boycotted and boycotting states varies from boycott to boycott, but all commercial and social relations between the two states and between their nationals may be stopped by activities of the agencies directing the boycott. The social organization of the state determines to some extent the ease with which such a movement as the boycott may originate and spread, but the willingness of the

government to profit in its diplomatic conversations from the existence of the movement unquestionably affects the boycott's popular strength. Factors unconnected with the boycott, affecting international markets, may materially affect the success of the movement. Over a long period of time, a state which is the object of recurrent boycotts from a particular state may substitute other markets for those from which it is periodically barred, or may take other defensive measures.

During the course of a war, the enforcement by one state of economic measures designed to influence the conduct of other states is affected by considerations which do not arise in time of peace. Neutral states are ordinarily required to maintain an attitude of impartiality as between the belligerents, and to permit the exercise of certain belligerent rights over their commerce on the high seas. Belligerents are required to respect the right of neutral states to maintain trade relations with each other and with each of the belligerents as in time of peace.

Neutral states have been accustomed to limit their exports for the purpose of better preserving neutrality or of conserving domestic supplies. Where their rights are infringed, however, they do not generally use control over their commercial relations with belligerents for the purpose of influencing belligerent conduct. Unless their injuries are great, and they are willing to enter the war, they confine themselves to diplomatic protests. The experience of the United States from 1794 to 1812 indicates that economic measures applying equally to both belligerents are ineffective, in certain circumstances at least, in influencing belligerent conduct. In the widespread type of war in which neutral rights are characteristically narrowly interpreted by belligerents, it is frequently difficult to determine which belligerent first invaded neutral rights, and, therefore, impossible to discriminate equitably between the belligerents. The injury to lucrative neutral trade which may result from the application of economic measures against belligerents renders such a policy inadvisable because of the alienation of popular support in the neutral state, unless measures are certain of achieving immediate results.

Belligerent states which attempt to coerce neutral states by any means run the risk of adding to the number of their enemies. During the World War, for the first time, each belligerent used the control of trade between its territory and neutral territory, and between its subjects and neutral subjects, for the purpose of causing neutral states to restrict the supply of goods within neutral jurisdiction to the opposing belligerent. The peculiar position of the European neutrals, their dependence upon overseas

supplies, their normally close economic relations with the Central Powers and with the Entente Powers, rendered them exceptionally vulnerable to economic pressure from each of the belligerents. The especially advantageous position of Great Britain and later of the United States in controlling important international commercial facilities and the world supply of bunker coal, as well as their ability to exercise belligerent rights at sea enabled the Entente Powers to use the situation of the neutral states to their advantage. Probably such coercion will only be exercised effectively in similar circumstances. Where the advantages one belligerent withholds can be secured from other sources, such coercion can not be attempted with any prospect of success. When neutral states affected are willing and able to enter the war, the enforcement of economic pressure may add to the number of the belligerent's enemies, without securing corresponding advantages.

Control of the exports of arms and munitions of war, by unilateral act of arms-exporting states, or by international agreement has ordinarily been used to discourage violent revolutions in certain areas of the world. Recently, attempts have been made to stop the export of arms to each of two belligerents, for the purpose of causing them to bring their war to a close. Refusal to ship arms to an area without the consent of the controlling government operates to preserve in power the existing regime, and to maintain a certain stability in governmental setups. Where embargoes are applied to shipments of arms destined to each of two belligerents, their effect is different. If each belligerent is equally dependent upon imported arms, this procedure maintains the relative strength of each; if they are not equally dependent upon imported arms, such a control may decide the issue of a war, although it is possible that it might be used to equalize the positions of the belligerents. The effectiveness of an embargo of munitions of war will depend upon the number of arms exporting states participating in its enforcement, and upon the ability of the groups affected to substitute other types of weapons for imported arms. Experience shows that the calculations of states whose participation in an arms embargo is essential for its success may be affected by international political considerations which have no direct connection with the conflict which it is sought to arrest.

The procedure for the enforcement of economic coercion against members of the League of Nations which start war in violation of their covenants under Articles Twelve, Thirteen, and Fifteen of the Covenant, and against non-member states in certain circumstances is merely an extension of a partial embargo on shipments of munitions to include all other commercial relations.

The Success of the measures outlined in the Covenant in aiding one Belligerent will depend upon the completeness with which the proscribed state is cut off from international intercourse and as fully upon that state's economic self-sufficiency. The enforcement of such measures against any state will result in loss to those states which maintain important trade relations with it; the losses sustained by the loss of normal trade may be greater to the embargo enforcing states than to the proscribed state. As long as the participation of Members of the League of Nations and the acquiescence of other states in such measures are optional, political considerations will enter into the calculations of all states participating.

The experience of members of the State System who have employed municipal regulations of commerce for the purpose of affecting the conduct of other states or have benefited from spontaneous measures of economic coercion indicates that the state which is the object of this coercion may generally complain against the use or toleration of such measures only on grounds of comity or of breach of existing treaties, unless circumstances call for the application of the law of war. Municipal regulations of commerce, even though they affect the welfare of other states have been regarded by international law, in spite of some textwriters to the contrary, as matters within the exclusive jurisdiction of the enacting state. Representations have been made by one state against the policies of another, but no state has ever claimed the right to demand changes in the municipal commerce regulations of another state except on the basis of specific treaty provisions. Long usage has recognized the acceptability of municipal controls of exports, for the purpose of limiting the supply of a commodity on the international market, and members of the State System have been forced to resort to municipal measures of their own in order to combat the effects of such controls.

No protest on the ground of breach of international law has ever been made by any affected state, on account of the use of retaliatory tariffs against it by another state, even where the effect of such tariffs has been to cut off normal trade relations between the states concerned. Representations, however, have often been made against high tariffs on the ground of treaty provisions, or on grounds of friendship and interest. The use of retaliatory tariffs is accepted by members of the State System as the logical course to secure more acceptable treatment of their goods from other states.

The international community has likewise long regarded the capital resources of any state as the tool of its national interests, whether used for the purpose of influencing the conduct

of foreign states, or of securing markets for the industries of the state.

The international boycott, the spontaneous movement of the people of one state to boycott the goods and nationals of another state has never engaged the responsibility of a state on whose territory such a movement occurred. The government of a state whose subjects are conducting a boycott may be expected to attempt to discourage the movement, but it cannot be required to bring it to an end, even though the existence of such a movement on its territory renders valueless privileges secured foreigners by treaties of commerce.

Governmental participation in or countenance of such a movement is a violation of ordinary treaties of commerce and may be an international delinquency. The participation of officials, or direct or indirect encouragement of the boycott constitutes governmental participation. But the participation in the movement of an "official" party, such as the Kuomintang of Nationalist China is not governmental participation. Toleration of a well organized boycott, in which large funds are collected and quasi-governmental powers exercised by private organizations has not caused a state to be held liable for the ensuing damages to foreigners. Failure of governmental processes adequately to protect foreigners may render the boycotting state liable under general principles of international law. The state may also be held liable for indirect damages occasioned foreigners by its failure to protect its own nationals from illegal violence, but no state has yet been held liable for such indirect damage to foreigners.

The use of the international boycott by a government as an instrument to achieve political objectives, such as the revision of treaties may possibly be an illegal act, unless it is a measure of defense against a continuing injury, or an act of reprisal designed to retaliate against an injury for which compensation has been refused by the boycotted state. The use of force by a boycotted state to force the government of the boycotting state to suppress the movement has been condemned by the Assembly of the League of Nations, but the intervention of armed forces of the boycotted state to suppress illegal activities of boycott pickets has not been protested by the boycotting states.

In time of war, municipal measures affecting foreign commerce, undertaken by neutral states for municipal purposes, if they are in their terms impartial, even though in their effects unequal as between the belligerents, are legitimate acts which do not derogate from the neutral character of the state. Similar measures adopted with the design of injuring one belligerent, or measures which are on their face unequal in terms between the

belligerents, are a derogation from the status of complete neutrality, and are allowable only as reprisal for previous invasion of neutral rights by the belligerent against which the measures are directed or under the terms of an international agreement.

Belligerent states are likewise free to adopt any municipal regulations of their commerce which promote their internal welfare. The failure of neutral states to protect their rights as against one belligerent, so that the opposing belligerent is adversely affected, may justify the second belligerent in exercising reprisals against the neutral state. Other belligerent commercial regulations affecting neutral conduct because of their effect upon neutral economy, cannot be defended diplomatically except as municipal measures, designed for municipal purposes.

The acquiescence of the international community in the unilateral or multilateral embargoes laid by arms exporting states on shipments of munitions of war to foreign states for the purpose of depriving rebel groups there of the means of overthrowing the existing government indicates that such measures are completely acceptable regulations of commerce. An international agreement to restrict the export of munitions of war to each of two belligerents has been approved by the majority of the members of the State System only when the belligerents are equally dependent upon imported arms; when the embargo is equal, not only in its terms, but also in its effects.

Measures restricting the commercial relations of one belligerent with neutral states, while permitting the other belligerent to trade without restraint, are legitimate when undertaken under the terms of an international agreement to which the proscribed state, and every participating state are signatories, or as reprisal for injury committed against the states participating in the restriction. A state which has sustained no injury from the proscribed state, and is not a party to an international agreement permitting the enforcement of such measures against the proscribed state, may not participate in the enforcement of such restrictions, and must not acquiesce in their enforcement as they affect its commerce with the belligerents, because of the derogation from neutrality.

Regulation of commerce within the state's territory has been recognized in practice and by international law textwriters as a matter within the jurisdiction of the state concerned, even where other states are adversely affected by the municipal regulations of trade enforced. On the other hand, international law textwriters recognize that every state has an incomplete right to maintain international trade and the practice of the State System

indicates that international comity ordinarily requires the maintenance of such commercial relations. The question remains, therefore, how far may one state in the exercise of its sovereign rights within its jurisdiction affect the welfare of the subjects of another sovereign state within the jurisdiction of the latter without encroaching upon the sovereign rights of the other.

The State by virtue of the internal and external independence which characterizes it as an International Personality and as a member of the Society of Nations is free to exercise its will without interference on the part of other members of the State System and to exercise complete sovereignty over all persons and things within its jurisdiction. The autonomy of the State in controlling and directing its commercial policy is derived from these characteristics. On the other hand, the existence of the State as a member of the Society of Nations implies that the State is limited in the exercise of the rights which it possesses by the exigencies of life in a community of other personalities of equal rank. No state, therefore, in estimating the extent of its legal rights may take into consideration only the objective limits of the law. This situation is clearly recognized by international law textwriters who limit the right of the state to control its peacetime commerce by the necessity which every state has of taking part in an international community one of whose chief links is international trade.

Certain international law textwriters have derived from the practice of the members of the State System the principle that when the exercise by the state of its rights injuriously affects the rights of other states, there is an abuse of the right and the act of the state may be attacked under general principles of international law.

" . . . the exercise of every right is subject to the proviso that it be not abusive so as to interfere unduly with the exercise of rights of others or cause them undue inconvenience or injury.¹

.
Each state is obligated not to push an insistence on its own right so far as to cause a disproportionate injury to others.²

.
No state shall unreasonably insist upon its rights or pursue its interests to the detriment of the opposing rights and

¹ Ellery C. Stowell, International Law (New York, 1931), p. 123.

² Ibid.

interests of other states."¹

" . . . the exercise of a hitherto legal right becomes unlawful when it degenerates into an abuse of rights."²

.
The same international interest tells us there is nothing absolute even in so-called rights of domestic jurisdiction. They are subject to the changing contents of the general body of international law in accordance with the requirements of international peace, justice, and the growing integration of the international community."³

In practice, it appears that the exercise of certain sovereign rights has been termed abusive by international tribunals and compensation granted or exercise enjoined for that reason.⁴ The exercise of the right to control commerce with the state's territory has not been successfully attacked except by virtue of treaty provisions,⁵ but this is no bar to its being attacked under general principles of international law.

" . . . the society of nations may at any time conclude that acts which the individual state was previously deemed to possess the right to commit without external interference are so injurious to the world at large as to justify the imposition of fresh restrictions."⁶

The principle that the control of commerce with its territory is a matter within the domestic jurisdiction of a state with which no state may interfere was the outgrowth of a century in which international commerce was relatively unimportant and in which domestic economic policies had relatively few important repercussions outside the state enforcing them. Domestic control of commerce for purely municipal purposes has had disastrous effects upon foreign economies, and controls of this character have been used successfully for the purpose of affecting the conduct of other states, simply because of the injury occasioned their domestic economies.

Under general principles of international law, therefore,

¹ Ibid., p. 130.

² Hersh Lauterpacht, Function of Law in the International Community (Oxford, 1933), p. 286.

³ Ibid., pp. 305-06.

⁴ See Lauterpacht, op. cit., pp. 288, 390, 300-03.

⁵ Edwin M. Borchard, Diplomatic Protection of Citizens Abroad (New York, 1914), p. 181, n. 1.

⁶ C.C. Hyde, International Law (Boston, 1922), I, 85.

it may be maintained that no state has the right so to control commerce with its territory as to affect unduly the economies of other states. A limitation of this character in no way affects the normal exercise of the sovereign power of the state over its internal economy. It will, however, limit the use of commercial controls for the purpose of willfully injuring another state so as to cause it to adopt a policy of action or abandon a policy already marked out.

A limitation of this character is essential if anarchy in international relations is to be avoided. As long as war was an instrument of national policy accepted by the majority of members of the state system, the use of controls of this character, especially of the popular boycott, was an effective weapon against the imperialist demands of the great powers. Unable to use war effectively, the weaker states protected themselves from encroachment by economic weapons. Now, however, the majority of the members of the State System have renounced the use of war as an instrument of national policy. This leaves those states which are economically self-sufficient, comparatively, in a position to coerce without fear of effective retaliation states less self-sufficient economically. If coercion of this character, employed by one state as an instrument of national policy, is not characterized as an abuse of the state's right to control its commerce, any state may be attacked by coercion whose effects may be more disastrous than war, and yet be powerless to protect itself if it has renounced recourse to war.

Industrial states, whose dependence on the maintenance of normal channels of international trade is very great, will not long deprive themselves of the use of physical force in their dealings with other states, when they may be seriously injured by inimical regulations of commerce within other states.¹

As measures of reprisal for an injury or of retaliation or retorsion for discourteous acts of another state, such domestic regulations of commerce are completely legitimate and have been so recognized on numerous occasions, explicitly and tacitly. But the use of such measures apart from these purposes, it is submitted, must be restricted by the necessity of the maintenance of normal channels of international trade to promote the economic

¹ Japan's military action against China since 1931 has been interpreted by the Japanese as the only answer to the devastating Chinese boycott of Japan; the only reply short of capitulation to Chinese demands available to Japan.

welfare of the Society of Nations as a whole. If the use of physical force for the attainment of national ends is to be abandoned, the use of economic force for the same purposes must likewise be limited.

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